

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

PUBLIC CITIZEN,
1600 20th Street NW
Washington, DC 20009,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
EDUCATION,
400 Maryland Avenue SW
Washington, DC 20202,

Defendant.

Civil Action No. 1:19-cv-1383

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This action is brought under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, to compel the United States Department of Education (ED) to produce records responsive to a FOIA request for agency records relating to ED's Internet usage policies.

JURISDICTION AND VENUE

2. This Court has jurisdiction under 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B). Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES

3. Plaintiff Public Citizen is a non-profit public-interest organization that works before Congress, regulatory agencies, and the courts to advance the interests of consumers and to educate the public on a wide range of consumer protection issues. In particular, Public Citizen works to promote openness in government and collects and disseminates information related to

governmental actions and practices. Public Citizen submitted the FOIA request at issue in this action.

4. Defendant ED is an agency of the federal government of the United States and has possession of and control over the records that Public Citizen seeks.

STATEMENT OF FACTS

5. On February 22, 2019, a Public Citizen staff member, while attending a meeting at ED, attempted to use ED's guest Wi-Fi network to access Public Citizen's website and received a message on his device that access to that website was "in violation of your Internet usage policy." The message referred to a "Web Access Webguard Filter Violation," and contained the following alphanumeric code: "GENKDCA-FGATA0."

6. On February 25, 2019, Public Citizen submitted a FOIA request to ED seeking ED's Internet usage policy; the criteria issued by ED to block access to websites under its "Web Access Webguard Filter"; records defining or identifying the meaning of a GENKDCA-FGATA0 violation as referenced in a screen shot attached to the FOIA request; and all other policies governing Internet access provided by ED to employees or guests (collectively, ED's "Internet usage policies"). The FOIA request sought records created or in effect since February 17, 2017.

7. The FOIA request sought a waiver of all fees under 5 U.S.C. § 552(a)(4)(A)(iii).

8. By letter dated February 26, 2019, ED acknowledged receipt of Public Citizen's FOIA request and designated the tracking number of the request as 19-00968-F.

9. By letter dated April 2, 2019, ED granted Public Citizen's request for a waiver of all fees.

10. By letter dated April 10, 2019, ED issued a final response to the FOIA request. ED stated that the records requested by Public Citizen could be accessed on ED's public facing website

and provided a hyperlink to a website where the responsive records purportedly could be located.

11. On April 12, 2019, Public Citizen timely appealed the final response to ED's Office of the Chief Privacy Officer. Public Citizen explained that the hyperlink that ED had provided in the final-response letter contained documents related only to ED's website and the website privacy policy, which are not responsive to the FOIA request. Public Citizen also noted that Public Citizen's own search of ED's website uncovered no documents concerning ED's Internet usage policies. Public Citizen explained an agency's legal obligation under FOIA to conduct a reasonable search for responsive documents.

12. By letter dated April 12, 2019, ED acknowledged receipt of Public Citizen's appeal of ED's final response.

13. More than 20 working days have passed since Public Citizen submitted its administrative appeal, and ED has neither responded to the administrative appeal nor produced any records responsive to the FOIA request.

CAUSE OF ACTION

14. Public Citizen has exhausted all administrative remedies with respect to its FOIA request for records regarding ED's Internet usage policy.

15. Public Citizen has a statutory right under FOIA, 5 U.S.C. § 552(a)(3)(A), to the records it requested, and there is no legal basis for ED's failure to disclose them.

PRAYER FOR RELIEF

WHEREFORE, Public Citizen requests that this Court:

- (1) Declare that ED's withholding of the requested records is unlawful;
- (2) Order ED to make the requested records available to Public Citizen at no cost and without delay;

(3) Award Public Citizen its costs and reasonable attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E); and

(4) Grant such other and further relief as this Court may deem just and proper.

May 14, 2019

Respectfully submitted,

/s/ Nandan M. Joshi
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